

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 13, 2007

No. 06-41618
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ROBERTO CASTANEDA-SILVA

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:06-CR-625-ALL

Before HIGGINBOTHAM, STEWART and OWEN, Circuit Judges.

PER CURIAM:*

Roberto Castaneda-Silva (Castaneda) appeals the 10-year statutory minimum sentence imposed after he pleaded guilty to possession with intent to distribute cocaine. He contends that he was entitled to a safety-valve sentence below the statutory minimum because he truthfully provided the Government with information about the crime. See U.S.S.G. § 5C1.2(a)(5); 18 U.S.C. § 3553(f)(5).

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

The district court did not commit clear error by finding that Castaneda made inconsistent statements to the Government about the number of smuggling trips he made and was thus not completely truthful in his disclosures to the Government. Castaneda failed to show that he was entitled to the safety valve reduction. See *United States v. Edwards*, 65 F.3d 430, 433 (5th Cir. 1995).

Castaneda also contends that he should have received a downward departure from the advisory sentencing range because he participated in the criminal activity under duress. See U.S.S.G. § 5K2.12. This contention is moot because Castaneda cannot avoid the statutory minimum sentence by way of the safety valve.

The judgment of the district court is **AFFIRMED**.